

ORIGINAL

APR 19 10 03 AM '00

COMMONWEALTH EDISON COMPANY)

Docket No. 00-0259

CHIEF CLERK'S OFFICE

Petition for expedited approval of implementation of a market-based alternative tariff, to become effective on or before May 1, 2000, pursuant to Article IX and Section 16-112 of the Public Utilities Act

Christopher J. Townsend
David I. Fein
Christopher N. Skey
PIPER MARBURY RUDNICK & WOLFE
203 N. LaSalle Street
Suite 1800
Chicago, Illinois 60601-1293

Attorneys For Enron Energy Services, Inc.

DATED: April 18, 2000

TABLE OF CONTENTS

I.	Executive Summary: The Commission Should Reject Edison's Proposed Alternative To The Neutral Fact-Finder Process	2
II.	Edison's Proposal Would Allow For Market Manipulation	4
A.	What Is The Volume Of Transactions Currently Being Traded On Altrade And Bloomberg For The Edison Trading Point?	5
B.	Who Are The Active Participants Currently Trading On Altrade And Bloomberg?	5
C.	Does Edison's Proposal Ensure The Integrity Of The "Screen Print"?	6
D.	What Prohibits Edison From Dispatching Its Generation Units In A Manner That Improperly Would Affect Pricing?	7
III.	Edison's Proposal Does Not Reflect Current Illinois Electric Prices	7
A.	Are The Markets Represented By Altrade And Bloomberg Accurate Reflections Of The Illinois Market?	8
B.	Is Use Of The PJM Interconnection Appropriate For Calculation Of Hourly Prices?	8
C.	Is Power Markets Week's <i>Daily Price Report</i> Appropriate For Calculating The Off-Peak Market Price?	9
IV.	Edison's Proposal Fails To Encourage Customer Choice	9
V.	Edison's Proposal Is Not A Statewide Solution	10
VI.	Edison's Proposal Is Contrary To Law	11
A.	A Component Of Edison's Proposal Is Improperly Based Upon Historic Data	11
B.	Customers Cannot Buy In The Altrade And Bloomberg Markets	12
VII.	Edison Has Failed To Satisfy Its Burden Of Proof	12
VIII.	If The Commission Implements Edison's Proposal, It May Lose Any Future Jurisdiction	14

IX.	The Schedule Adopted By The Commission Violates Due Process and Justifies Rejection Of Edison's Index Proposal As An Alternative To The Neutral Fact-Finder	15
A.	The Schedule Adopted Is Unworkable And Contrary to Commission Rules And Practice	15
B.	The Schedule Adopted Violates Parties' Due Process Rights	17
X.	Response To The Questions Of Chairman Mathias	19
XI.	Conclusion	22

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

COMMONWEALTH EDISON COMPANY)	
)	
)	Docket No. 00-0259
Petition for expedited approval of)	
implementation of a market-based alternative)	
tariff, to become effective on or before May)	
1, 2000, pursuant to Article IX and Section)	
16-112 of the Public Utilities Act)	

**OBJECTION AND
VERIFIED COMMENTS OF
ENRON ENERGY SERVICES, INC.**

Enron Energy Services, Inc. ("Enron"), by its attorneys Piper Marbury Rudnick & Wolfe, objects to the schedule adopted by the Hearing Examiner in the instant proceeding and, without waiving any objection, submits its Verified Comments to the Illinois Commerce Commission ("Commission") regarding the petition for approval of a market-based alternative ("Petition") to the Neutral Fact-Finder ("NFF") filed by Commonwealth Edison Company ("Edison") pursuant to Section 16-112(a) and Article IX of the Public Utilities Act (the "Act").

Edison has failed to demonstrate that its proposal is just and reasonable. On its face, Edison's proposal is designed to improperly shift risks from Edison and its shareholders to ratepayers and alternative retail electric suppliers ("ARES"). Further, the schedule adopted in the instant proceeding violates due process and is contrary to the Commission's rules, Commission practice and Illinois law. As a result, the Commission should reject Edison's Petition.

I.

EXECUTIVE SUMMARY:

THE COMMISSION SHOULD REJECT EDISON'S PROPOSED ALTERNATIVE TO THE NEUTRAL FACT-FINDER PROCESS

The instant proceeding could reshape the face of competition in the electric markets in Illinois for the foreseeable future. Regardless of the Commission's dislike for the current NFF process, it should resist the temptation to hastily embrace an unproven, untested alternative. Serious questions exist regarding Edison's proposal; the Commission should allow parties to raise these questions and should demand answers before blindly adopting a proposal that likely would undermine the development of competitive electric markets in Illinois.

The Electric Customer Choice and Rate Relief Act of 1997 ("Customer Choice Act") provides two alternatives for arriving at the starting point for the calculation of market value: the Neutral Fact-Finder ("NFF") process, or the use of a market traded index. (See 220 ILCS 5/16-112(a), (b)-(h).) Edison has proposed that the Commission approve an alternative to the NFF that primarily is based upon two private posting services, Altrade and Bloomberg Power Match ("Bloomberg"). Based upon its recognition of the insufficiency of these two services, Edison proposes to further complicate the process by relying upon historic information obtained from Power Markets Week's *Daily Price Report* and the PJM Interconnection, L.L.C. Contrary to Edison's assertions, there is no reasonable assurance that its proposal will promote efficient competition or provide its customers with any additional opportunities to save money. (See Petition at 4.) Indeed, it appears that Edison's proposal merely would shift the risk of price spikes this summer from Edison to its customers.

Enron is a certified ARES, providing service to customers in the Edison service territory. An inappropriate market index replacement for the current NFF process would harm Enron, its customers and Illinois consumers. Edison has not presented sufficient evidence that its proposal is superior to the NFF process. Further, Enron and other parties have been precluded from conducting proper discovery, presenting testimony or cross-examining Edison's witnesses. Edison's proposal is deficient on its face and lacks sufficient credibility to make it an appropriate alternative to the NFF process.

As the Commission contemplates reshaping the Illinois electric industry, the Commission should be concerned about the following issues:

- **Would Edison's proposal allow parties to manipulate the markets?** Edison asserts that it would not, but it is Enron's understanding and good faith belief that manipulation is likely to occur because the markets represented by Altrade and Bloomberg are thinly traded and this easily could be manipulated. Other problems are presented as a result of the proposed "bid/ask" methodology and the discretion given to Edison to print the screens which would be used in calculating the Market Value.
- **Would Edison's proposal reflect current Illinois electric prices?** Edison asserts that it would, but it is Enron's understanding and good faith belief that Edison's proposal would not provide an accurate reflection of the price of electricity in Illinois – at either the wholesale or the retail level.
- **Would Edison's proposal promote competition throughout Illinois?** Implementation of Edison's proposal is not a statewide solution and would increase the lack of uniformity in determining market values for Illinois electric utilities.
- **Does Edison's proposal encourage customer choice?** On its face, Edison's proposed revised Rider PPO - Power Purchase Option (Market Index) does not lend itself to customer understanding and implementation of this proposal on such short notice. Without adequate time for consideration, approving Edison's proposed tariffs simply would add to customer confusion regarding the electric markets in Illinois. Indeed, Enron already has been forced to field a variety of questions from customers who do not understand the way in which the instant proceeding could impact their rates.
- **Is Edison's proposal contrary to law?** The Customer Choice Act requires that any alternative to the NFF be based upon an index, not historic data. The Customer Choice Act also requires that the index reflect the prices in the market in which Edison's customers buy electricity. Edison's proposal fails to meet these fundamental legal requirements.

Furthermore, by forcing the Commission to enter an Order in the instant proceeding prior to May 1, 2000, Edison has ensured that any party who opposes its filing will not be able to exercise its due process rights.

As the Commission is aware, on March 23, 1999, Edison filed a petition to approve an alternative to the NFF based upon CINergy. (See Commonwealth Edison Company, Petition for approval of an alternative methodology for calculating market values pursuant to Article IX and Section 16-112 of the Public Utilities Act, ICC Docket No. 99-0117.) The markets represented by Altrade and Bloomberg appear to be more thinly traded than the CINergy index that was rejected by the Commission last summer. Of course, last year the Commission had the benefit of a complete record and a thorough examination of the proposal, including a process that afforded parties the right to conduct discovery, present evidence, cross-examine witnesses, and submit briefs in accordance with the Commission's rules of practice. In light of the thinly traded nature of the markets represented by Altrade and Bloomberg, as well as the even greater potential for abuse and manipulation, the lack of any third-party executor to protect against manipulation, and the lack of complete record, the Commission should similarly reject Edison's current proposal.

II.

EDISON'S PROPOSAL WOULD ALLOW FOR MARKET MANIPULATION

The Commission should reject Edison's proposed use of the markets represented by Altrade and Bloomberg because they are thinly traded and leave open the possibility, indeed the likelihood, of price manipulation.

The most significant problem with using prices in a low volume market for the determination of market value is price manipulation. In a low volume market, the number of contracts necessary to move the price would be relatively small. Additionally, in such a thinly traded market, even good faith trades can result in price manipulation. The impact of just a few

trades could be inordinately significant in light of the fact that the markets have few, if any, contracts that are being traded.

As a result of the schedule adopted in the instant proceeding, Enron has a number of questions regarding the threat of price manipulation that cannot be answered through the traditional means of discovery, testimony, and hearings. Edison's proposal to fundamentally reshape the market fails to include even the most basic information necessary for the Commission to evaluate the proposal. For example, the Commission should have answers to the following questions:

A. WHAT IS THE VOLUME OF TRANSACTIONS CURRENTLY BEING TRADED ON ALTRADE AND BLOOMBERG FOR THE EDISON TRADING POINT?

It is Enron's understanding and good faith belief that a limited number of trades are actually completed on the Altrade and Bloomberg systems. All other values were based on bid and ask prices. Unfortunately, neither the Commission nor the parties to the instant proceeding know what the volume is without discovery. Additionally, there is very limited history to analyze whether the Altrade and Bloomberg forward prices reflect the actual market for power and energy.

B. WHO ARE THE ACTIVE PARTICIPANTS CURRENTLY TRADING ON ALTRADE AND BLOOMBERG?

It is Enron's understanding and good faith belief that many major market participants do not actively trade on Altrade and only sporadically trade on Bloomberg. It is entirely possible that trades by Edison could dominate these systems, thus improperly skewing the price calculations.

As the Commission may be aware, Enron has its own trading platform known as EnronOnline, for energy trading in all of the active markets in the United States. Because of the

lack of liquidity in the Edison market, Enron traders do not even post forward market information on the Edison hub on EnronOnline. Additionally, since the launch of EnronOnline, even the volume of transactions in the more liquid markets, such as PJM and CINergy, have dropped significantly.

Price manipulation can occur from sources other than the utility. Anyone interested in the price of power and energy in the Edison service territory with sufficient financial means would have the ability to manipulate price in a low volume market where virtually every trade can affect the price. The fact that the trades need not be consummated provides even more opportunities for market manipulation. For example, since the times that the snapshots will be taken of the Altrade and Bloomberg systems are stated in Edison's tariffs, parties with such knowledge can revoke bid and ask prices and be able to manipulate the index price.

Active market participants know that the Edison hub is considered to be illiquid and there is no reason to believe that it is on the verge of becoming a liquid market. For this reason alone, the Commission would be justified in rejecting Edison's Petition.

C. DOES EDISON'S PROPOSAL ENSURE THE INTEGRITY OF THE "SCREEN PRINT"?

It is Enron's understanding and good faith belief that the potential for price manipulation is compounded by the lack of any independent third party executor for calculating the Market Values utilized on either Altrade or Bloomberg. The daily screen prints of Altrade and Bloomberg are subject to extreme manipulation due to the two hour window that is allegedly required by the "manual" nature of the process. (See Petition, Exhibit A.) During this two hour window, multiple screen prints can be made and then the number most favorable to Edison. Enron seriously questions whether this two hour window is necessary or reasonable.

**D. WHAT PROHIBITS EDISON FROM
DISPATCHING ITS GENERATION UNITS IN
A MANNER THAT IMPROPERLY WOULD AFFECT PRICING?**

It is Enron's understanding and good faith belief that under Edison's proposal the potential exists for Edison to unilaterally take actions that improperly would affect pricing. The Commission should reject Edison's proposal unless and until such opportunities for abuse are fully addressed.

Edison easily could devise schemes that would allow it to improperly profit from its generation assets. For example, prior to the March "snapshot" Edison could announce a scheduled maintenance for one of its biggest nuclear units during the summer months, knowing that such maintenance would not actually occur. The announcement will likely result in a price increase. Edison then could enter into contracts to sell its power, based upon the prices reflected in the Altrade or Bloomberg systems. At a later date, Edison could then announce that it has delayed the previously scheduled maintenance, allowing the market price to drop to previous levels. Thus, Edison would be able to deliver the power at costs much lower than the price reflected in the PPO rates.

Enron seriously questions whether there are sufficient safeguards, due to the lack of any independent third-party executor, to protect the integrity of Edison's proposal.

III.

**EDISON'S PROPOSAL DOES
NOT REFLECT CURRENT ILLINOIS ELECTRIC PRICES**

As the Commission is aware, just last year, the Commission rejected Edison's proposed alternative to the NFF because it failed to accurately reflect the actual prices of electricity in the Illinois markets. (See Order, ICC Docket No. 99-0171, at 16.) The Commission likewise should question whether the Altrade and Bloomberg systems, Power Markets Week's *Daily Price*

Report, and hourly price shapes of the PJM Interconnection, L.L.C. accurately reflect the Illinois market. In this truncated proceeding, Edison has not provided any evidence that such systems do accurately reflect the Illinois market. It is Enron's understanding and good faith belief that the systems used in Edison's would not accurately reflect the Illinois market.

A. ARE THE MARKETS REPRESENTED BY ALTRADE AND BLOOMBERG ACCURATE REFLECTIONS OF THE ILLINOIS MARKET?

The Commission should question whether the Altrade and Bloomberg systems reflect all or substantially all of the transactions into and out of the State of Illinois or the Edison service territory. Based upon the information submitted by Edison, it does not appear that either Altrade or Bloomberg reflect the market in which Edison sells and customers in its service territory buy electric power and energy. Customers are not allowed to buy electric power and energy using Altrade or Bloomberg. It is also Enron's understanding and good faith belief that Altrade and Bloomberg reflect an extremely small percentage of wholesale power trades that occur in Illinois.

B. IS USE OF THE PJM INTERCONNECTION APPROPRIATE FOR CALCULATION OF HOURLY PRICES?

The Commission should be inquiring whether the hourly price shapes of the PJM Interconnection, L.L.C., Western Hub, Locational Marginal Price Data are an appropriate basis upon which to calculate hourly prices for the Edison service territory. Based upon the information submitted into the record by Edison, it does not appear that the PJM Interconnection, L.L.C., Western Hub, Locational Marginal Price Data reflects the hourly prices in which Edison sells and customers in its service territory buy electric power and energy. Edison has presented no evidence to suggest that hourly pricing relationships between PJM (West) are applicable to the MAIN region. Furthermore, Edison has not given any reason why the Commission should

endorse use of PJM (West) data, rather than data for the entire PJM system. However, Enron and other parties have been precluded by the schedule adopted in the instant proceeding from asking discovery questions, submitting testimony, or conducting cross-examination to answer such questions.

**C. **IS POWER MARKETS WEEK'S DAILY PRICE REPORT
APPROPRIATE FOR CALCULATING THE OFF-PEAK MARKET PRICE?****

The Commission should inquire whether the Power Markets Week's *Daily Price Report* is an appropriate basis upon which to calculate the off-peak market prices for the Edison service territory. Based upon the information submitted by Edison, it does not appear that the Power Markets Week's *Daily Price Report* reflects the off-peak market in which Edison sells and customers in its service territory buy electric power and energy. Unfortunately, Enron and other parties have been precluded by the schedule adopted in the instant proceeding from asking discovery questions, submitting testimony, or conducting cross-examination to appropriately address such contested issues.

IV.

**EDISON'S PROPOSAL FAILS TO
ENCOURAGE CUSTOMER CHOICE**

Contrary to Edison's assertions, its proposal fails to encourage customer choice. Edison's proposed revised Rider PPO does not lend itself to customer understanding, much less proper implementation on such short notice. Without adequate time for consideration, approving Edison's proposed tariffs simply would add to existing customer confusion regarding the electric markets in Illinois.

Customers and RES likely are in the midst of evaluating various options based upon the currently effective tariffs that may no longer be applicable if the Commission adopts Edison's

proposal. Additionally, there are likely many Edison customers who are not even aware of Edison's proposal and who have missed the very small window to intervene in the instant proceeding. Regardless of the outcome of the instant proceeding, the Commission should investigate precisely what, if anything, Edison has told its customers regarding the Edison proposal. Since Enron and other parties have been precluded from conducting discovery and cross-examining Edison's witnesses, no other parties have the opportunity to ask these fundamental and important questions about Edison's proposal. The Commission should not approve Edison's proposal which based solely upon Edison's bare assertion that it would promote customer choice.

V.

**EDISON'S PROPOSAL
IS NOT A STATEWIDE SOLUTION**

Edison's proposal is not supported by other Illinois electric utilities. This alone should be cause for caution by the Commission. If Edison's portrayal of its proposal is accurate, the Commission should question why the other utilities have chosen to retain the NFF process. Moreover, further eroding uniformity in the way in which transition charges are calculated would discourage the development of competition across the state of Illinois.

Adoption of Edison's proposed tariffs would further exacerbate the problem of the lack of uniformity among delivery service tariffs throughout the state. Since there is virtually no competition outside of the Edison service territory, approval of Edison's proposal would further complicate and inhibit the development of competition in the other service territories in Illinois. Chairman Mathias appeared to recognize this fact when he asked the following question to the parties in the instant proceeding:

The proposed tariffs contained in the Petition are applicable only to ComEd. Given the current status of competition and choice in Illinois, how, if at all, would

the approval of this proposal affect the adoption of market index based tariffs to determine market value by other electric utilities in Illinois as well as the development of retail competition in service territories in Illinois other than the ComEd service territory?

As recognized in the March 30, 2000, Report of the Chairman's Roundtable Discussions regarding Implementation of the Customer Choice Act ("Chairman's Report"), the lack of uniformity between service areas is a **"substantial barrier to competition."** (See Chairman's Report at 31.) The lack of uniformity raises the cost of customer acquisition, as ARES must master different business practices, unique tariff provisions, and pricing schemes. (See *id.*)

Since the Edison proposal is not a statewide solution, the Edison proposal should not be adopted; this is especially true given the expedited schedule adopted by the Hearing Examiner. Instead, the Commission should strive for more uniform business practices and tariff provisions on a statewide basis.

VI.

EDISON'S PROPOSAL IS CONTRARY TO LAW

The Customer Choice Act requires that any alternative to the NFF be based upon an index, not historic data. (See 220 ILCS 5/16-112(a).) The Customer Choice Act further requires that the index reflect the prices in the market in which Edison's customers buy electricity. (See *id.*) Edison's proposal fails each of these fundamental legal requirements. Because Edison's proposal is contrary to law, the Commission must reject it out of hand.

A. A COMPONENT OF EDISON'S PROPOSAL IS IMPROPERLY BASED UPON HISTORIC DATA

As previously stated, the Customer Choice Act requires Edison's tariff to provide for a determination of the market value "as function of an exchange traded or other market traded index, options or futures contract or contracts." (See 220 ILCS 5/16-112(a).) As previously

indicated, under Edison's proposal the off-peak prices are to be based upon the Power Markets Week's *Daily Price Report*. Since the Power Markets Week's *Daily Price Report* is based upon historic data, not an exchange traded or other market index, options, or futures contracts, it is contrary to the Customer Choice Act and must be rejected by the Commission.

**B. CUSTOMERS CANNOT BUY IN
THE ALTRADE AND BLOOMBERG MARKETS**

The Customer Choice Act requires that the index reflect the prices in the market in which Edison sells, and its customers buy electricity. (See 220 ILCS 5/16-112(a).) Under Edison's proposal, customers cannot buy electricity using Altrade, Bloomberg or Power Market Week's *Daily Price Report*. (See IIEC Objection to Edison's Proposed Schedule, Exhibit A.) As such, Edison's proposal must be rejected as being contrary to the Customer Choice Act.

VII.

**EDISON HAS FAILED TO
SATISFY ITS BURDEN OF PROOF**

Edison has the burden of proving the justness and reasonableness of its proposed tariff. As the Commission is well aware, Section 9-201(c) of the Act provides: "**The burden of proof** to establish the justness and reasonableness of the proposed rates and other charges, classifications, contracts, practices, rules or regulations, in whole and in part, **shall be upon the utility.**" (220 ILCS 5/9-201(c).) (Emphasis added.) Even though the procedural schedule adopted for the instant proceeding allows only Edison to present "evidence," and even though that "evidence" was not subject to cross-examination, Edison still has failed to provide the Commission with anything more than mere assertions made by its employees to support its proposed alternative to the NFF.

Edison has failed to present sufficient evidence that its proposal is just and reasonable, much less evidence that it is superior to the NFF process. Based upon the information submitted solely by Edison, its present proposal is deficient in its methodology and lacks sufficient credibility to make it an attractive alternative to the NFF process. Since Edison has failed to satisfy its burden of proof, the Commission must reject Edison's proposal.

Edison asserts that its proposal "(1) more accurately reflects the regional market in which Edison sells and its customers buy electric power and energy; (2) provides visible and current price signals for all participants; and (3) enables both customers and suppliers to forecast future market values." (See Petition at 3-4.) In ICC Docket No. 99-0171, Edison made the **identical** assertions when it sought approval of an alternative to the NFF based upon the CINergy Index. (See Commonwealth Edison Company, Petition for approval of an alternative methodology for calculating market values pursuant to Article IX and Section 16-112 of the Public Utilities Act at 3-4, ICC Docket No. 99-0117.) After conducting a traditional Commission proceeding that allowed for parties to conduct discovery, file direct and rebuttal testimony, participate in hearings, and submit initial briefs; the Commission **rejected** Edison's proposal finding that it was not in compliance with the requirements of Section 16-112 of the Act. For many of the same reasons, the Commission must reject Edison's current proposal.

In ICC Docket No. 99-0117, the proceeding was conducted on an expedited basis over the course of five (5) months, but parties were afforded an opportunity to conduct discovery, present direct and rebuttal testimony, participate in two days of evidentiary hearings, file initial briefs, and briefs on exceptions. In **rejecting** Edison's proposal to base Market Values on the CINergy hub last summer, the Commission was particularly concerned with the "**less than robust level of trading**" in the CINergy market. (See Order at 16). (Emphasis added.) The

Commission concluded that such a thinly traded market increases the possibility of market manipulation. (*See id.* at 16.) The Commission was not convinced that the safeguards and standards adopted by NYMEX were sufficient to protect against manipulation. Significantly, the Commission warned that such potential for market manipulation could have a **chilling effect** on the development of a competitive electric energy market in Illinois. (*See id.*)

Edison's current filing appears as deficient, if not more deficient, than the CINergy index proposal Edison filed last summer. Edison has not provided any evidence regarding the number of trades, volume of trades or the likelihood of market manipulation associated with the Altrade and Bloomberg systems. Edison failed to even provide the workpapers behind its current proposal. Given the lack of evidence in this record, it would constitute reversible error for the Commission to adopt Edison's current proposal.

VIII.

IF THE COMMISSION IMPLEMENTS EDISON'S PROPOSAL, IT MAY LOSE ANY FUTURE JURISDICTION

If the Commission were to adopt Edison's proposal, the Commission may not ever be able to change or modify the tariffs. The Commission should be mindful of this fact if it decides to adopt Edison's proposal under this unprecedented procedural schedule, without the benefit of a full and complete record.

Section 16-112(m) of the Act provides: "The Commission may approve or reject, or propose modifications to, any tariff providing for the determination of market value that has been proposed by an electric utility pursuant to subsection (a) of this Section, but shall not have the power to otherwise order the electric utility to implement a modified tariff or to place into effect any tariff for the determination of market value other than one incorporating the neutral fact finder procedure set forth in this Section." (220 ILCS 5/16-112(m).) While it appears that

Edison is willing to file a "report" regarding the impact of its proposal, it does not suggest that the Commission could modify the proposal once it becomes effective. Certainly the Commission should not adopt a potentially permanent restructuring of the Illinois electric industry based upon the scant, legally deficient record in the instant proceeding.

IX.

THE SCHEDULE ADOPTED BY THE COMMISSION VIOLATES DUE PROCESS AND JUSTIFIES REJECTION OF EDISON'S INDEX PROPOSAL AS AN ALTERNATIVE TO THE NEUTRAL FACT-FINDER

The schedule adopted by the Hearing Examiner is unfair, illegal, inappropriate, unrealistic, and unworkable, is unheard of in the experience of prior Commission proceedings and violates parties' due process rights.

Edison's petition improperly requested and the Commission improperly adopted a schedule that violates due process and is contrary to the Commission's rules, Commission practice and Illinois law. Specifically, the schedule adopted does not allow adequate time for the parties to fully address and analyze the issues, much less propose alternatives, and does not allow for the Commission to be fully informed and have a full record upon which to deliberate on those issues.

A. THE SCHEDULE ADOPTED IS UNWORKABLE AND CONTRARY TO COMMISSION RULES AND PRACTICE

Clearly, the schedule adopted for the instant proceeding is unworkable. Edison filed its petition on Friday, March 31, 2000, seeking an order by April 27, 2000, allowing the Commission and interested parties less than one month to deliberate on both factual and policy issues that would significantly alter in mid-stream the landscape of the competitive marketplace in Illinois.

The schedule adopted for the instant proceeding is unlike any seen in the history of Commission practice, especially for a rate proceeding of such magnitude. Contrary to Commission practice, the schedule adopted:

- Does not allow for any discovery, even though Edison failed to file any workpapers to support its proposal;
- Does not provide for the filing of any testimony by any party except Edison;
- Provides insufficient time for the parties to prepare and present a comprehensive response to Edison's proposal;
- Does not permit interested parties to respond by testimony to one another's testimony;
- Does not provide for cross-examination of Edison's witnesses;
- Does not even provide for initial or reply briefs;
- Does not allow sufficient time for the preparation of briefs on exceptions and reply briefs on exceptions;
- Does not permit adequate time for deliberation by the Hearing Examiner;
- Essentially forces the Hearing Examiner to adopt in total the Proposed Order attached to Edison's petition;
- Does not permit adequate time for deliberation by the members of the Commission.

This schedule requires the Commission to make fundamental legal and policy decisions that will determine the future structure of the electric industry in the State of Illinois without the benefit of cross-examination or the orderly presentation of alternative viewpoints. Significantly, the Hearing Examiner made no findings that would justify deviating from the Commission's rules or Commission practice. The schedule adopted by the Hearing Examiner in the instant

proceeding clearly would undermine public perception and confidence in the integrity of the ratemaking process at the Commission.

**B. THE SCHEDULE ADOPTED
VIOLATES PARTIES' DUE PROCESS RIGHTS**

It is well established in Illinois that administrative proceedings must conform to the constitutional requirements of due process of law. *Stillo v. State Retirement Sys.*, 305 Ill.App.3d 1003, 1009, 714 N.E.2d 11, 16 (1st Dist. 1999). Administrative proceedings are governed by the same fundamental principles of due process as judicial proceedings. *Abrahamson v. Ill. Dep't of Prof. Regulation*, 153 Ill.2d 76, 92, 606 N.E.2d 1111, 1120 (1992).

Ratemaking cases such as the instant proceeding are "contested" cases." (See 220 ILCS 5/10-101.) Contested cases are adjudicatory in nature, and must be determined by an agency only after an opportunity for a hearing. (See 5 ILCS 100/1-30.) In such cases, the Commission's own rules provide for "full disclosure of all relevant and material facts to a proceeding." (See 83 Ill. Admin. Code Part 200.340.) Notwithstanding Edison's desire to have the Commission implement a fast-track approach, this is an adjudicatory proceeding, and as such fundamental due process protections are appropriate.

In a contested case before the Commission, parties are entitled to a hearing, pursuant to both the Illinois Administrative Act and constitutional principles of procedural due process. *People ex rel. Ill. Commerce Comm'n v. Operator Communication, Inc.*, 281 Ill.App.3d 297, 301-03, 666 N.E.2d 830, 832-34 (1st Dist.), *appeal denied* 168 Ill.2d 623, 671 N.E.2d 742 (1996). However, a hearing alone is not enough. In *Operator Communication*, the court specifically found that in contested cases, "[d]ue process of law is served where there is a right to present evidence and argument in one's own behalf, a right to cross-examine adverse witnesses, and impartiality in ruling upon the evidence which is offered. *Id.* (Citations omitted.) Clearly,

the procedural schedule adopted by the Hearing Examiner precludes the parties from undertaking **any** of these activities.

Finally, due process requires not only the technical opportunity to be heard, but also the opportunity to be heard "at a meaningful time and in meaningful manner." *Petersen v. Chicago Plan Comm'n of City of Chicago*, 302 Ill.App.3d 461, 466, 707 N.E.2d 150, 154 (1st Dist. 1998). The Commission's Rules of Practice provide that in order to eliminate the requirement for a hearing, Staff, all parties to the proceeding and the Hearing Examiner all must agree that such approach is appropriate. (See 83 Ill. Admin. Code Part 200.525.) A number of parties including Staff and Enron objected to the elimination hearings in the instant proceeding. The unprecedented expedited schedule robs Enron and other intervenors of any meaningful opportunity to be heard and is clearly prejudicial to their interests.

Edison would have the Commission believe that a series of informal workshops substitutes for the procedural safeguards required by due process. As stated in the Objection of the IIEC, workshops do not have the same protections as hearing. (See IIEC Objection at 3.) For instance, parties participating in workshops are not under oath; no party has the right to cross-examine such parties; and parties are not necessarily represented by counsel during the workshop process. Participation in workshops is voluntary and has never been utilized to forgo parties' rights if not present. While in certain circumstances workshops and other informal negotiation sessions can benefit parties and save Commission resources, Enron strongly objects to any inference that workshops are an adequate substitute for constitutionally protected due process safeguards. Illinois law does not support Edison's claim. A failure to maintain this distinction would undermine the legitimacy of the Commission's decision-making process, would be a significant departure from the Commission's historic practice, and likely would

constitute reversible error. *See BPPI v. Ill. Commerce Comm'n*, 136 Ill.2d 192, 228, 555 N.E.2d 693, 709 (1989) (Commission decisions entitled to less deference when they drastically depart from past practice).

X.

RESPONSE TO THE QUESTIONS OF CHAIRMAN MATHIAS

On April 13, 2000, the Chairman issued a number of questions to the parties in the instant proceeding. Enron has attempted to provide as complete of responses as it could given the time constraints imposed upon parties to the instant proceeding. Enron would welcome the opportunity to provide more complete responses in the context of an appropriate hearing.

Question 1

ComEd representatives recently stated during Commerce Commission Electric Policy Meetings and during legislative forums that the provisions of the Electric Service Customer Choice and Rate Relief Law of 1997 (Customer Choice Law) are working well and that there is robust development of retail competition in the ComEd service territory. How are these statements reconciled by ComEd with the filing of this Petition in which ComEd requests a substantial change, on a very expedited basis, in the market value determination?

Response to Question 1

It is apparent that the statements of Edison representatives cannot be reconciled by the filing of its Petition in the instant proceeding. It is obvious that the reason for Edison seeking a substantial change in the market value determination on such an unprecedented expedited schedule is out of its own self-concern, as a result of the marketplace scenario that is unfolding in its service territory. As recognized in the Chairman's Report, "this spring, many ARES may place their customers on the power purchase option offered by the utility to avoid the risks associated with energy price spikes during the summer months." Thus, Edison was faced with most of the ARES customers opting to take service under Edison's PPO tariff because of the low summer Market Values calculated by the NFF.

Question 2

The ComEd Petition states that the expeditious approval of this Petition is in the public interest because it will promote the ongoing transition to a fully competitive retail market by providing additional opportunities for savings to customers. (Emphasis added.) Please explain.

Response to Question 2

It is not apparent that the Edison proposal will provide additional opportunities for savings to customers. There certainly is no guarantee that customers would be better off under Edison's proposal. In fact, under the Edison proposal it appears that there is a mismatch between transition charges and market values. As recognized by MidAmerican, during the higher priced summer period, Edison is able to collect transition charges even if the combination of transition charges plus market value yields a price to the customer **higher** than bundled service. (See MidAmerican Petition to Intervene and Comments at 5.) This situation is reversed in the non-summer months. (See *id.*) MidAmerican further notes that since Edison proposes to begin its annual period in the summer, the collection of transition charges is front-loaded. (See *id.*) The Commission should not rush to guarantee that Edison's shareholders receive even more transition charges.

Question 3

Assuming that the summer market value reflected in ComEd's current tariffs is too low and therefore that the current transition charge is too high, and further assuming that ComEd's proposal in this proceeding is not approved, indicate how, if at all, ComEd will propose that its transition charge be changed?

Response to Question 3

This question recognizes a fundamental problem regarding the determination of market values and the subsequent calculation of transition charges; the underlying premise should be reevaluated and revised. Rather than adopting a proposal that is designed to protect Edison and its shareholders from risk, the Commission should develop a solution that would benefit consumers, the marketplace and the utilities. All of the participants in the Illinois electric markets would benefit from an actual evaluation of the stranded costs that may or may not be appropriate for each utility to recover through transition charges.

Since passage of the Customer Choice Act, Edison has eliminated its fuel adjustment clause; sold its fossil fuel generation assets; valued its nuclear fleet; issued securitization bonds; and conducted the financial analysis necessary to effectuate a merger with PECO. Undoubtedly, there is sufficient information now available for Edison to present a stranded cost calculation. After the stranded cost calculation is submitted to the Commission for approval, the Commission should initiate an investigation to determine the validity of Edison's calculation and to monitor the collection of transition charges, if any.

Illinois consumers and the Illinois competitive retail electric market would benefit greatly by a process that allowed the transition charge to be based upon solid evidence, rather than various untested and unproven indicies that do not reflect the price of electricity in Illinois.

Question 4

Due to the vagaries of the retail electric market and other considerations, what are the benefits and/or detriments to ComEd recommending to the Commission that this tariff be effective for a defined time period rather than for an indefinite time period. And what would be the appropriate defined time period, if any.

Response to Question 4

If the Commission decides to adopt Edison's proposed tariffs, the Commission should require that the tariffs remain in effect for only the remainder of calendar year 2000. The numerous questions regarding the liquidity of the markets represented by Altrade and Bloomberg and the vagaries and uncertainties of the retail market in Illinois warrants a limited duration for the effectiveness of Edison's proposed tariffs.

Further, if the Commission were to adopt Edison's proposal, Edison should agree to allow the Commission, on its own motion, or upon complaint, to retain jurisdiction over the instant tariffs, notwithstanding any prohibition contained in Section 16-112 of the Act.

Question 6

The proposed tariffs contained in the Petition are applicable only to ComEd. Given the current status of competition and choice in Illinois, how, if at all, would the approval of this proposal affect the adoption of market index based tariffs to determine market value by other electric utilities in Illinois as well as the development of retail competition in service territories in Illinois other than the ComEd service territory?

Response to Question 6

Adoption of Edison's proposed tariffs would further exacerbate the problem with the lack of uniformity among delivery service tariffs throughout the state. Since there is virtually no competition outside of the Edison service territory, approval of Edison's proposal will further complicate and inhibit the development of competition in the other service territories in Illinois. As recognized by the Chairman's Report, the lack of uniformity between service areas is a "**substantial barrier to competition.**" (See Chairman's Report at 31.) The Commission should reject the Edison proposal because it is not a statewide solution. Instead, the Commission should strive for more uniform business practices and tariff provisions on a statewide basis.

XI.

CONCLUSION

As desirable as it may be to move to an alternative to the NFF, that movement should not be undertaken if there are too many open questions about the effect of so doing. The schedule adopted precludes the parties from thoroughly examining the numerous factual questions and deficiencies identified by Enron and other parties. Therefore, Edison's proposal for an alternative to the NFF must be rejected at this time. The Commission should reject Edison's proposal because:

- It can be manipulated;
- It does not reflect true price of electricity in the markets into which Edison can sell and its customers can buy electricity;
- It does not promote competition;
- It would confuse customers even more than the current process;
- It is not a statewide solution; and
- It does not meet the requirements of the Customer Choice Act.

WHEREFORE, in accordance with arguments herein, Enron Energy Services, Inc. respectfully request that the Commission enter an Order:

- (1) Denying Edison's Petition, consistent with the arguments contained herein or, in the alternative, setting an appropriate schedule that does not violate the due process rights of the parties to the instant proceeding;
- (2) Scheduling continued meetings of the Electric Policy Committee with representatives of and participants in other exchange traded indices, including but not limited to Palo Verde, CINergy, COB, PJM, TVA, and ERCOT, in order to develop an appropriate and workable alternative to the NFF process; and

- (3) Granting such further additional or different relief as the Commission deems appropriate.

Respectfully submitted,

ENRON ENERGY SERVICES, INC.,

By: David I. Fein
One of Its Attorneys

Christopher J. Townsend
David I. Fein
Christopher N. Skey
PIPER MABURY RUDNICK & WOLFE
203 N. LaSalle Street, Ste. 1800
Chicago, Illinois 60601-1293
(312) 368-4000

Dated: April 18, 2000

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

COMMONWEALTH EDISON COMPANY)

) Docket No. 00-0259

)
)
) Petition for expedited approval of
) implementation of a market-based alternative
) tariff, to become effective on or before May
) 1, 2000, pursuant to Article IX and Section
) 16-112 of the Public Utilities Act
)

AFFIDAVIT OF HARRY J. KINGERSKI

STATE OF ILLINOIS)

) SS

COUNTY OF COOK)

HARRY J. KINGERSKI, being duly sworn, states as follows:

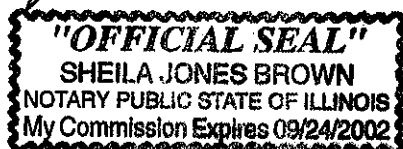
1. If provided with an opportunity to testify, he would state that he has been employed with Enron Corp. since 1996 and is currently Senior Director, Rates/Regulatory, in the State Government/Federal Regulatory Affairs group of Enron Corp. His office is located at Enron Corporation ("Enron Corp."), 1400 Smith Street, Houston, Texas 77002.
2. If provided with an opportunity to testify, he would state that the information contained in the Objection and Verified Comments of Enron Energy Services, Inc. is true and correct to the best of his knowledge, information and belief.
3. Further Affiant sayeth not.

Dated this 18th day of April, 2000.

Harry J. Kingerski
Harry J. Kingerski

Subscribed and sworn to before me
this 18th day of April, 2000.

Sheila Jones Brown
Notary



**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

COMMONWEALTH EDISON COMPANY)

)

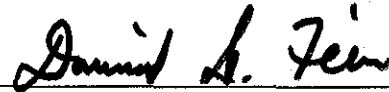
) Docket No. 00-0259

Petition for expedited approval of)
implementation of a market-based alternative)
tariff, to become effective on or before May)
1, 2000, pursuant to Article IX and Section)
16-112 of the Public Utilities Act)

NOTICE OF FILING

Please take note that on April 18, 2000 we mailed an original and (3) copies of the Objection and Verified Comments of Enron Energy Services, Inc. in the above-referenced proceeding to the Chief Clerk of the Illinois Commerce Commission, Donna Caton, 527 E. Capitol Avenue, P.O. Box 19280, Springfield, IL 62794-9280.

Dated: April 18, 2000



David I. Fein

CERTIFICATE OF SERVICE

I, David I. Fein, certify that copies of the foregoing Objection and Verified Comments of Enron Energy Services, Inc. were served upon the parties on the attached service list via U.S. Mail and electronic delivery from 203 N. LaSalle Street, Chicago, Illinois 60601 on April 18, 2000.



David I. Fein

SERVICE LIST

DOCKET NO. 00-0259

Robert P. Jared Regulatory Law & Analysis MidAmerican Energy Company 106 East Second Street P.O. Box 4350 Davenport, Iowa 52808	E. Glenn Rippie Acting Associate General Counsel Commonwealth Edison Company 125 South Clark Street Chicago, IL 60603
Joseph L. Lakshmanan, Esq. Regulatory Services Illinois Power Company 500 S. 27 th Street Decatur, IL 62525	Carl Peterson Illinois Commerce Commission 160 N. LaSalle St., Ste. C-800 Chicago, IL 60601-3104
Donna M. Caton Chief Clerk Illinois Commerce Commission 527 E. Capitol Ave. P.O. Box 19280 Springfield, IL 62794-9280	Edward Washington, II Bureau Chief Larry Warren Illinois Attorney General's Office Public Utilities Bureau 100 W. Randolph Street 12 th Floor Chicago, IL 60601
Nicholas T. Shea Central Illinois Light Company 300 Liberty Street Peoria, IL 61602	Philip R. O'Connor Tom Bramschreiber Ken Walsh NewEnergy Midwest, L.L.C. 29 South LaSalle Street Suite 900 Chicago, IL 60603
Steven G. Revethis John C. Feeley Office of the General Counsel Illinois Commerce Commission 160 N. LaSalle Street Suite C-800 Chicago, IL 60601-3104	Bruce Larson Illinois Commerce Commission 527 East Capitol Avenue Springfield, IL 60601

Michael A. Munson Nicor Energy, LLC Law Office of Michael A. Munson 8300 Sears Tower 233 South Wacker Drive Chicago, IL 60606	Eric Robertson Edward C. Fitzhenry Illinois Industrial Energy Consumers Lueders, Robertson & Konzen 1939 Delmar Avenue P.O. Box 735 Granite City, IL 62040
Kathy Lipp Director - Regulations & Restructuring Alliant Energy 222 West Washington Avenue P.O. Box 192 Madison, WI 53701-0192	Eric Bramlet Mt. Carmel Public Utility Co. Koger & Bramlet, P.C. 316 ½ Market Street Mt. Carmel, IL 62863
Robert Bishop Illinois Commerce Commission 527 East Capitol Avenue Springfield, IL 62701	Sarah J. Read Mitchel A. Mick Sidley & Austin One Bank One Plaza 10 South Dearborn Street Chicago, IL 60603
Steve Hickey Illinois Commerce Commission 527 East Capitol Avenue Springfield, IL 62701	Edward J. Griffin W. Michael Seidel Defrees & Fiske 200 S. Michigan Avenue, Suite 1100 Chicago, IL 60604
Michael Hastings Edgar Electric Co-operative Association d/b/a EnerStar P.O. Box 3787 Springfield, IL 62708-3787	James Hinchliff Gerard T. Fox Mary Klyasheff Timothy P. Walsh Peoples Energy Services Corporation 130 E. Randolph Drive - 23 rd Fl. Chicago, IL 60601

<p>Kent M. Ragsdale Managing Attorney Alliant Energy Corporate Services 200 First Street SE P.O. Box 351 Cedar Rapids, Iowa 52406-0351</p>	<p>Koby Bailey Director of Regulatory Affairs Nicor, Inc. P. O. Box 3014 Naperville, IL 60566-7014</p>
<p>Sue Landwehr Director - Government Affairs Enron Energy Services, Inc. 900 Second Avenue South Suite 890 Minneapolis, MN 55402</p>	<p>Julie Voeck Blackhawk Energy Services N16 W 23217 Stone Ridge Drive Suite 100 Waukesha, WI 53188</p>
<p>Christopher W. Flynn Karl B. Anderson Jones, Day, Reavis & Pogue 77 West Wacker Chicago, Illinois 60601-1692</p>	<p>Joseph H. Raybuck Ameren Services Company 1901 Chouteau Avenue P.O. Box 66149 St. Louis, Missouri 63166-6149</p>
<p>Patrick Foster Illinois Commerce Commission 527 East Capitol Avenue Springfield, IL 62701</p>	<p>Greg Baise Illinois Manufacturers' Association 303 West Madison Suite 600 Chicago, IL 60606</p>
<p>Freddi Greenberg 1603 Orrington Avenue Suite 1050 Evanston, IL 60201</p>	<p>Leijuana Doss Marie Spicuzza Assistant State's Attorneys Environment and Energy Division 69 West Washington, Suite 700 Chicago, IL 60602</p>
<p>Robert Mill AmerenCIPS 607 East Adams Street Springfield, IL 62739</p>	<p>James Stamos Stamos & Trucco 10 North Dearborn 5th Floor Chicago, IL 60602</p>
<p>Stephen Mattson Joseph Weber Mayor, Brown & Platt 190 South LaSalle Street Chicago, IL 60603</p>	<p>Stan Ogden Central Illinois Light Company 300 Liberty Street Peoria, IL 61602-1404</p>

<p>Alan H. Neff Ronald D. Jolly Assistants Corporation Counsel City of Chicago Department of Law Suite 900 30 North LaSalle Street Chicago, IL 60602-2580</p>	<p>Steven Walter City of Chicago Department of Environment Suite 2500 30 North LaSalle Street Chicago, IL 60602-2580</p>
<p>David Vite Illinois Retail Merchants Association 19 South LaSalle Street Suite 300 Chicago, IL 60603</p>	<p>Martin R. Cohen Citizens Utility Board 208 South LaSalle Street Suite 1760 Chicago, IL 60604</p>
<p>Larry Jones Hearing Examiner Illinois Commerce Commission 527 East Capitol Avenue Springfield, IL 62701</p>	<p>Kate Siddon Illinois Commerce Commission 160 North LaSalle Street Suite C-800 Chicago, IL 60601</p>
<p>Chairman Richard L. Mathias Illinois Commerce Commission 160 North LaSalle Street Suite C-800 Chicago, IL 60601</p>	<p>Commissioner Ruth L. Kretschmer Illinois Commerce Commission 160 North LaSalle Street Suite C-800 Chicago, IL 60601</p>
<p>Commissioner Terry S. Harvill Illinois Commerce Commission 160 North LaSalle Street Suite C-800 Chicago, IL 60601</p>	<p>Commissioner Edward C. Hurley Illinois Commerce Commission 160 North LaSalle Street Suite C-800 Chicago, IL 60601</p>
<p>Commissioner Mary Frances Squires Illinois Commerce Commission 160 North LaSalle Street Suite C-800 Chicago, IL 60601</p>	<p>Charles E. Fisher Executive Director Illinois Commerce Commission 160 North LaSalle Street Suite C-800 Chicago, IL 60601</p>
<p>Tom Ihrig CMS Energy One Jackson Square Suite 1060 Jackson, MI 49201-1406</p>	<p>Mark Radtke WPS-ESI President 677 Baeten Road Green Bay, WI 54304</p>

Tom Kennedy Illinois Commerce Commission 527 East Capital Avenue Springfield, IL 62701	Bryan Kimmell Strategic Energy Management Corp. 28 South Water Street Suite 204, East Wing Batavia, IL 60510
Robert Stephens Brubaker & Associates, Inc. 1215 Fern Ridge Parkway Suite 208 St. Louis, MO 63141	Lisa Medas First Energy Services 1910 West Market Street Arkon, OH 44313
Gary Shannahan Leonard Jones Mark Peters Illinois Power Company 500 South 27 th Street Decatur, IL 62527	Connie Clonch Debbie Kutsunis MidAmerican Energy Company 106 East Second Street Davenport, IA 52808
Tony Delacluyse MidAmerican Eenergy 666 Grand Avenue Des Moines, IA 50303	Windi Ito Nicor Energy 1001 Warrenville Road Lisle, IL 60532
Frank Huntowski Scott Fisher NorthBridge Group 55 Old Bedford Road Lincoln, MA 01773	Bob Gilpin James Kaczka Unicom Energy 2315 Enterprise Westchester, IL 60154
Peter Scarpelli Jackie Orren CILCO 300 Liberty Street Peoria, IL 61602	Bob Gutschenritter Alliant Energy 222 West Washington Avenue Madison, WI 53701
David Linton Keith Hock Michael Yuskus Ameren Corporation 1901 Chouteau Avenue St. Louis, MO 63103	Mark Eacret Ameren Energy 1901 Chouteau Avenue St. Louis, MO 63103

<p>Todd Masten AmerenCIPS 607 East Adams Street Springfield, IL 62739</p>	<p>Lonnie Upshaw Vice President - Operations Nicor Gas 1844 Ferry Road Naperville, IL 60563</p>
<p>Conrad R. Reddick Deputy Corporation Counsel City of Chicago 30 North LaSalle Street Suite 1040 Chicago, IL 60602</p>	<p>Bobbi Welch Jan Gamboa Peoples Energy Services Corporation 130 East Randolph Street, 23rd Floor Chicago, IL 60601</p>
<p>Sanajo Omoniyi Illinois Commerce Commission 527 East Capitol Avenue Springfield, IL 62794</p>	<p>Frank Bagot Mark Ludwig Dynegy Marking and Trade 1211 West 22nd Street Suite 204 Oak Brook, IL 60523</p>
<p>Craig Sieben Sieben Energy Associates 401 North Wabash Avenue Suite 536 Chicago, IL 60611</p>	<p>Michael J. Sheridan CMS Marketing, Services & Trading Co. One Jackson Square Suite 1060 Jackson, MI 49201</p>